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10/603,643	06/25/2003	C. David Shook	8142	2758

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EXAMINER

NGUYEN, CAMTU TRAN

ART UNIT	PAPER NUMBER
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3743

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/603,643
Filing Date: June 25, 2003
Appellant(s): SHOOK ET AL.

MAILED
JUN 30 2006
Group 3700

Kenneth Mitchell
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 30, 2006 appealing from the Office action mailed November 30, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

The statement of the status of claims contained in the brief is correct.

Claim 20 has been canceled, as authorized by applicant's representative, Mr. Mitchell.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 9-12, and 14-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Gold (U.S. Patent No. 5,187,814). Gold discloses in Figures 6 and 7 a sock (400) with attached heater pack (34) comprising elements as recited in these claims including the sock (400) having a chamber (450) for receiving the heater pack (30). With regards to the compression stocking and the understocking, as recited, it is not unreasonable to interpret these elements in the claims given their broadest reasonable interpretation consistent with the supporting description. According to applicant's disclosure on page 8 lines 6-8, the Gold's sock (400) as illustrated in Figure 7 having an upper outer wall (402), a lower outer wall (401), and an inner chamber wall (403) can be easily meet applicant's compression stocking and understocking wherein the Gold's upper outer wall (402) fits over the inner chamber wall (403) and secures the inner chamber wall (403) and the heater pack (30) to the user's or patient's body. The Gold device would be inherently capable of performing the steps as recited in the method claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gold (U.S. Patent No. 5,187,814). Gold discloses in Figures 6 and 7 a sock (400) with attached heater pack (34) comprising elements as recited in these claims including a chamber (450) for receiving a heater pack (30). With regards to claims 5, 6, and 13, the Gold's chamber (450) is bounded by a joint at where the upper wall and the lower wall (401, 402) and the opening end of the chamber where mating hook and pile connectors (441, 442) are found. Therefore it would have been obvious to one of ordinary skill in the art to recognize the Gold's chamber (450), structured as described above, as the same equivalent for the same purpose as claimed.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gold (U.S. Patent No. 5,187,814) and further in view of Lyles (U.S. Patent No. 6,001,122). Gold discloses in Figures 6 and 7 a sock (400) with attached heater pack (34) comprising elements as recited in these claims including a chamber (450) for receiving a heater pack (30) but does not teach the chamber (450) extends 360 degrees within the sock (400). Lyles discloses in Figures 1-4 a bootie (10) with thermal pack (24) removably situated within a pair of pockets (18) that which are mounted on the sleeve (18) of the bootie (10), the pair of pockets (18) includes a top pocket (18) and a bottom pocket (22) and as illustrated in Figure 4 the pockets (18) extends 360 degrees. Therefore it would have been obvious to one skilled in the art during the time of the

invention to modify Gold's chamber such that it would extend 360 degrees within the sock (400) as such would provide the more chamber area.

(10) Response to Argument

The following ground(s) of rejection are applicable to the appealed claims:

Applicant's arguments filed on May 30, 2006 have been carefully considered but deem not persuasive.

In response to applicant's arguments, the recitation that the "compression stocking" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not dependent for completeness upon the introductory cause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

With regards to Issue I, based on Gold as anticipated by USC 102(b) rejection, Gold discloses in Figures 6 & 7 a sock (400) comprising an upper outer wall (402), a lower outer wall (401), and an inner chamber (403) forming a chamber-like or pocket or sleeve with an opening having mating hook (441, 442) wherein the opening receives heater pack (30) therein. With regards applicant's comments pertaining gel pad, such pad is well known in the art of heater packs such as the one mentioned in U.S. Patent No. 5,984,953 to Sabin et al which relates to a self-heating thermal heat pack provided through the use of preformed reversibly stiffened gel that alters the rate of exothermic chemical reactions. Therefore it the heater pack mentioned in the Gold reference can be immediately directed to the Sabin et al's thermal heat pack. The Gold device would be inherently capable of performing the steps as recited in the method claims.

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With regards to Issue II, based on the Gold as being unpatentable by USC 103(a) rejection, claims 5, 6, and 13, the Gold's chamber-like or pocket or sleeve is bounded by a joint at where the upper wall and lower wall (401, 402) are found and the opening end of the chamber-like comprising mating hook and pile connectors (441, 443), one of ordinary skill in the art would have recognized such fastening structures as the same equivalent for the same purpose as claimed. With regards to claims 13 and 14, the Gold device is constructed by a soft mesh such as cotton rachele knit mesh (column 5 lines 55-57) and in a further embodiment the Gold device is formed of a woven nylon (column 5 lines 64-66).

With regards to Issue III, based on the Gold reference and further in view of the Lyles reference, the Gold reference discloses all elements as recited but lacks the teaching of the chamber-like extends 360 degrees within the sock, as recited. Lyles discloses in Figures 1-4 a bootie with pocket having thermal pack (24) wrapping around the bootie. Therefore it would have been obvious to one skilled in the art during the invention to have the Gold's chamber-like extends 360 degrees around the sock as taught by Lyles for the purpose of providing more treating chamber area.

It is inescapable that the rejections presented above applied alone or in a combination renders all of applicant's claimed subject matter.

For the reasons above, it is believed that all ground of rejections should be sustained.

Respectfully submitted,

Camtu Nguyen

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